

IN THE MARION CIRCUIT COURT

CAUSE NO. \_\_\_\_\_

STATE OF INDIANA,

Plaintiff,

V.

KEITH JOHNSON,

**Defendant.**

49D030501PL000132

**FILED**

115 JAN - 3 2005

*James Craig Sadler*  
CLERK OF THE  
MARION CIRCUIT COURT

**COMPLAINT FOR INJUNCTION, RESTITUTION,  
COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Roger D. Smith, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, the Indiana Home Improvement Contracts Act, Ind. Code § 24-5-11-1 *et seq.*, and the Indiana Home Solicitation Sales Act, Ind. Code § 24-5-10 *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

## PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code § 24-5-11-14.
2. The Defendant, Keith Johnson (“Johnson”), is an individual engaged in business as a home improvement contractor with a current principal place of business at 2905 North LaSalle, Indianapolis, Indiana, 46218.

## FACTS

3. Since at least August 23, 2003, Defendant has entered into home improvement contracts with Indiana consumers.

4. On or around August 23, 2003, Defendant entered into a home improvement agreement with Charles Cookston ("Cookston") of Indianapolis, Indiana, following the Defendant's solicitation of Cookston at Cookston's home, wherein Defendant agreed to remove dirt around the back of the house, and dig dirt in front of the garage for a price of eight hundred and fifty dollars (\$850.00). A true and accurate copy of the contract is attached and incorporated by reference, and is marked as Exhibit "A".

5. On or around August 23, 2003, Cookston made a down payment of four hundred twenty five dollars (\$425.00) to Defendant for the job.

6. The Defendant failed to provide Cookston with a completed home improvement contract that contained the following:

- a. the address of the residential property that was the subject of the home improvement;
- b. any time limitation on the consumer's acceptance of the home improvement contract;
- c. the approximate starting and completion dates of the home improvement;
- d. any contingencies that would materially change the approximate completion date; and
- e. signature lines for Defendant or Defendant's agent and for each consumer who was to be a party to the home improvement contract

with a legibly printed or typed version of Defendant's and

Cookston's names placed directly after or below the signature.

7. The home improvement contract does not show the dates Defendant and Cookston executed the contract.

8. Defendant failed to deliver to Cookston a written notice of the consumer's right to cancel the transaction.

9. Defendant represented that he would complete the work described in paragraph 4 the same day.

10. On August 23, 2003, Defendant failed to return to Cookston's home and move the dirt as enumerated in the agreement.

11. On or around August 24, 2003, Defendant answered Cookston's telephone call and stated that he could not begin or complete the work the previous day due to a flat tire.

12. Since August 24, 2003, Cookston has attempted to contact Defendant repeatedly, but Defendant has not responded to date.

13. Defendant failed to start the work described in paragraph 4 above, including, but not limited to, moving dirt on Cookston's property.

14. Although Defendant represented by implication that he would perform the work described in paragraph 4 above, Defendant failed to complete the work under the home improvement contract.

15. On or around May 25, 2004, Defendant entered into an oral home improvement agreement with Landrum Shields ("Shields") of Indianapolis, Indiana, wherein he was to repair broken concrete on a patio and some brick steps at Shields' home for a price of five hundred dollars (\$500.00).

16. On or around May 25, 2004, Shields paid Defendant the full price of five hundred dollars (\$500.00) for the job.

17. The Defendant failed to provide Shields with a written home improvement contract that contained the following:

- a. the name of the consumer and the address of the residential property that was the subject of the home improvement;
- b. the name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- c. the date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- d. a reasonably detailed description of the proposed home improvements;
- e. specifications, or a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- f. the approximate starting and completion dates of the home improvement;
- g. a statement of any contingencies that would materially change the approximate completion date;
- h. the home improvement contract price; and

- i. signature lines for the Defendant or the Defendant's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or a typed version of the Defendant's and Shields' name placed directly after or below the signature.

18. Defendant failed to sign the home improvement contract.

19. Defendant failed to submit a fully executed copy of the home improvement contract to the consumer immediately after the consumer signed it, which lists the dates Defendant and Shields executed the contract.

20. Defendant told Shields that he would complete the work described in paragraph 15 within one day.

21. On or around May 25, 2004 and May 26, 2004, Defendant worked on Shields' property, but never completed the job.

22. On or around May 30, 2004, Defendant spoke to Shields, by phone, and promised to complete the job on June 1, 2004.

23. On June 1, 2004, Defendant failed to report to Shields' house and finish the project.

24. Defendant failed to complete the work described in paragraph 15 above.

25. Although Defendant represented by implication that he would perform the work described in paragraph 15 above, Defendant failed to complete the work under the home improvement contract.

#### **COUNT I-VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT**

26. The services described in paragraphs 4 and 15 are "home improvements" as defined by Ind. Code § 24-5-11-3.

27. The transactions referred to in paragraphs 4 and 15 are "home improvement contracts" as defined by Ind. Code § 24-5-11-4.

28. Defendant is a "supplier" as defined by Ind. Code § 24-5-11-6.

29. By failing to provide completed home improvement contracts to Cookston and Shields containing the information referred to in paragraphs 6 and 17, Defendant violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-10.

30. By accepting five hundred dollars (\$500.00) from Shields before Defendant signed an agreement to all of the terms of the home improvement contract, as referred to in paragraph 18 above, Defendant violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-11.

31. By failing to provide Cookston and Shields with a fully executed copy of the home improvement contract containing the dates Defendant and the consumers executed the contracts, as referred to in paragraphs 7 and 19 above, Defendant violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-12.

#### **COUNT II – VIOLATIONS OF THE HOME SOLICITATION SALES ACT**

32. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 31 above.

33. The transaction referred to in paragraph 4 above is a "home consumer transaction" as defined by Ind. Code § 24-5-10-4.

34. Defendant is a "supplier" as defined by Ind. Code § 24-5-10-6.

35. By failing to provide Cookston with a copy of a written notice of the consumer's right to cancel the transaction, as referred to in paragraph 8 above, Defendant violated the Home Solicitation Sales Act, Ind. Code § 24-5-10-9.

### **COUNT III – VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT**

36. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 35 above.

37. The transactions referred to in paragraphs 4 and 15 are “consumer transactions” as defined by Ind. Code § 24-5-0.5-2(a)(1).

38. Defendant is a “supplier” as defined by Ind. Code § 24-5-0.5-2(a)(3).

39. The violations of the Indiana Home Improvement Contracts Act referred to in paragraphs 6, 7, 17, 18, and 19 above constitute deceptive acts in accordance with Ind. Code § 24-5-11-14.

40. The violation of the Indiana Home Solicitation Sales Act referred to in paragraph 8 above constitutes a deceptive act in accordance with Ind. Code § 24-5-10-18.

41. By representing that he could provide home improvement services to Cookston within a reasonable amount of time, when the Defendant knew or reasonably should have known that he would not provide the home improvement services within a reasonable time, as referred to in paragraph 14, the Defendant violated Ind. Code § 24-5-0.5-3(a)(10).

42. By representing that he could provide home improvement services to Shields within a reasonable amount of time, when the Defendant knew or reasonably should have known that he would not provide the home improvement services within a reasonable time, as referred to in paragraph 25, the Defendant violated Ind. Code § 24-5-0.5-3(a)(10)

43. The misrepresentations and deceptive acts set forth above will continue and will cause irreparable injury unless Defendant is enjoined from engaging in further conduct that violates Ind. Code § 24-5-0.5-1 *et seq.*, and Ind. Code § 24-5-11-1 *et seq.*

**COUNT III – KNOWING AND INTENTIONAL VIOLATIONS OF THE  
DECEPTIVE CONSUMER SALES ACT**

44. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 43 above.

45. The misrepresentations and deceptive acts set forth in paragraphs 6, 7, 8, 14, 17, 18, 19, and 25 above were committed by the Defendant with knowledge and intent to deceive.

**RELIEF**

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Keith Johnson, enjoining the Defendant from the following:

a. In the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract, which includes at a minimum the following:

1. The name of the consumer and the address of the residential property that is the subject of the home improvement;
2. The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
3. The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
4. A reasonably detailed description of the proposed home improvements;



5. If the description required by Ind. Code § 24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
6. The approximate starting and completion date of the home improvements;
7. A statement of any contingencies that would materially change the approximate completion date;
8. The home improvement contract price; and
9. Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature.

b. In the course of entering into home improvement transactions, failing to agree by written signature to all of the terms of the home improvement contract prior to accepting a down payment for the work;

c. In the course of entering into home improvement transactions, failing to provide a fully executed copy of the home improvement contract, which includes the dates the supplier and each consumer executed the contract, to the consumer immediately after the consumer signs it;

d. in the course of entering into home consumer transactions, failing to deliver to the consumer two (2) copies of a written notice of the consumer's right

to cancel the transaction, which shall be in at least ten (10) point boldface type and contain the following information:

1. The address to which the consumer's notice of cancellation may be delivered or sent;
2. A statement that the transaction may be cancelled before midnight of the third business day after the consumer and the supplier finally agree to the transaction;
3. A statement of the explanation of the steps the consumer must take to cancel the home consumer transaction;
4. A statement of the steps the consumer and supplier must take after cancellation of the home consumer transaction; and
5. The date by which the consumer must exercise the right to cancel the transaction; and

e. Representing, expressly or by implication, that the Defendant is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendant knows or reasonably should know that Defendant cannot.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant for the following relief:

- a. Consumer restitution to Cookston in the amount of four hundred twenty five dollars (\$425.00) pursuant to Ind. Code § 24-5-0.5-4(c)(2);
- b. Consumer restitution to Shields in an amount to be determined at trial pursuant to Ind. Code § 24-5-0.5-4(c)(2);

c. Costs, pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

d. On Count III of the Plaintiff's Complaint, civil penalties, pursuant to Ind. Code §24-5-0.5-4(g), for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana;

e. On Count III of the Plaintiff's Complaint, civil penalties, pursuant to Ind. Code §24-5-0.5-8, for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana; and

f. All other just and proper relief.

Respectfully submitted,  
STEVE CARTER  
Attorney General of Indiana  
Atty. No. 4150-64

By: \_\_\_\_\_

*Roger D. Smith*  
Roger D. Smith  
Deputy Attorney General  
Atty. No. 23152-49

Office of Attorney General  
Indiana Government Center South  
302 W. Washington, 5th Floor  
Indianapolis, IN 46204  
Telephone: (317) 232-4774  
rds/198961

499417

**STATEMENT**

DATE 8-23-03

TERMS

TO

ADDRESS

Charles Cookston  
Monter Dr.

IN ACCOUNT WITH

Keith Johnson

Remove dirt  
around the back  
of house and  
dig dirt in  
front of garage

All total

\$850.00

Half to start  
bal. on completionOwner - Hal Johnson  
Sub - Keith JohnsonSTATE'S  
EXHIBIT